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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/722,579	11/26/2003	Mitchell Clark Voges	38213.00011.CIP1	5674
23562	7590	08/31/2005	EXAMINER	
BAKER & MCKENZIE PATENT DEPARTMENT 2001 ROSS AVENUE SUITE 2300 DALLAS, TX 75201			BLAU, STEPHEN LUTHER	
			ART UNIT	PAPER NUMBER
			3711	

DATE MAILED: 08/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Tata

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/722,579

Applicant(s)

VOGES ET AL.

Examiner

Stephen L. Blau

Art Unit

3711

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 August 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: As disclosed in the Final Office Action.
Claim(s) objected to: As disclosed in the Final Office Action.
Claim(s) rejected: See item 13 below.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☒ Other: See Continuation Sheet.


STEPHEN BLAU
PRIMARY EXAMINER

Continuation of 3. NOTE: Adding elements of structure in claim 1 of the optimizing a lunch angle and spin rate based on swing parameters requires further consideration and/or searching.

Continuation of 5. Applicant's reply has overcome the following rejection(s): The argument that the claims are enabling for baseline matrix as disclosed by the specification is agreed with and the 35 U.S.C. 112, first paragraph rejection for claims 48-52 is removed. However the word "fit" was not changed to --if-- as stated in the arguments for claim 48 so there is still an error with claim 48 before claim 48 is considered clear.

Continuation of 11. does NOT place the application in condition for allowance because: The amendment to claim 50 is agreed with and would overcome the objection in an entered amendment. The submitted drawings 11 August 2005 are approved and the drawings are no longer objected to. The argument that it is improper to combine the references of Antoniuos and Hammand because Antoniuos is not directed to a system and method of measuring swing data and combining it with swing information related to a golfer's current swing in order to derive swing parameters is disagreed with. Clearly both Antoniuos and Hammand are directed to methods of fitting golfer's with equipment and both are directed to deriving swing parameters. Clearly it would be obvious to add the parameters together since both a directed to solve the same problem which is to make a golfer perform better. The argument that it is improper to combine the references of Hammond and Naruo because the action provides no motivation is disagreed with. Naruo discloses additional use of strain data than that taught by Hammond with the objective to select an optimum flex for a shaft (Col. 2, Lns. 28-41, Col. 3, Lns. 4-6). Clearly Naruo is wanting to use strain data also in the selection of golf equipment as well. The argument that it is improper to combine the references of Nauck and Hammand because Nauck is not directed to a system and method of measuring swing data and combining it with swing information related to a golfer's current swing in order to derive swing parameters is disagreed with. Clearly both Nauck (Col. 4, Lns. 30-55) and Hammand are directed to methods of fitting golfer's with equipment and both are directed to deriving swing parameters so that a golfer has the greatest positive effect. Clearly it would be obvious to add the information of Nauck of what is current equipment being used together with the strain data of Naruo so one could conclude if new equipment is needed. This is an implied step by Hammond. The argument that it is improper to combine the references of Sayers and Hammand because Sayers is not directed to a system and method of measuring swing data and combining it with swing information related to a golfer's current swing in order to derive swing parameters is disagreed with. Clearly both Sayers (Col. 1, Lns. 18-26) and Hammand are directed to methods of fitting golfer's with equipment and both are directed to deriving swing parameters so that a golfer has the greatest positive effect. Clearly it would be obvious to add the information that Sayer's teaches as important of fitting a player with a personal timing, coordination and physical strength to his equipment together with the strain data of Naruo so the best equipment is being selected. Mann also teaches that level of competition means certain equipment should be used. Clearly this would be important for the method of fitting of Hammond likewise. The argument that Cervates or Hammond do not disclose swing flaws should be corrected prior to fitting is disagreed with. Clearly the method of fitting of Hammond includes swinging and evaluating a swing by a golfer in order to fit equipment to a golfer. Cervantes teaches when evaluating a golfer's swing to correct any flaws. Specifically in order to gain good data from the strain gages this would be an obvious step to perform during the method of fitting for Hammond. The argument that Cervantes does not provide swing instruction is agreed with. However Cervantes does disclose that golfers may have swing flaws that need to be corrected. Clearly this would lead it to be obvious for a fitter who uses a swing in the fitting method correct any swing errors in order to make the fitting method more meaningful. It is agreed that the examiner did make an error in stating that Naruo disclosed a color camera. The argument that it is improper to make an Official Notice that it is known to have camera's which record in color is noted. As such the examiner submits Naoi (5,459,793) to show it is known to have color cameras. It would have been obvious to modify the method of Hammond in view of Naruo to have a colored camera in order to make the swing information being visually pleasing to the one watching the video monitor. The argument that it is improper to use the reference of Naruo since Naruo does not use swing information such as that which is stated on page 23 of the response is disagreed with. Load time, load pattern, etc... are swing information as well. Nothing prevents using this type of informations as swing information.

Continuation of 13. Other: Due to the challenge to the Examiner's Official Notice the reference of Naoi (5,459,793) will replace it to show that it is known to have colored cameras.